

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Lopez et al.

Application No.: 10/664,820

Confirmation No.: 3436

Filed: September 17, 2003

Art Unit: 3625

For: METHOD AND SYSTEM FOR PRICE
SUGGESTING USING ITEM-SPECIFIC
ATTRIBUTES

Examiner: M. Airapetian

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief responds to the Examiner's Answer mailed on December 13, 2007 in the above-identified application, and is in furtherance of the Notice of Appeal filed on June 8, 2007, and the Appeal Brief filed on September 6, 2007.

I. STATUS OF CLAIMS

Claims 1-71 have been presented. Claims 2, 11-61, 63-64, and 67 have been canceled. Claims 1, 3-10, 62, 65-66, and 68-71 are therefore presently pending and stand finally rejected.

Claims 1, 3-10, 62, 65-66, and 68-71 are the subject of the present appeal.

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. The Examiner's Rejections

1. The Examiner rejected claims 1, 3, 6, 8-9, 62, 65-66, and 68-71 under 35 U.S.C. § 103(a) over U.S. Patent No. 6,411,960 to Fisher ("Fisher") and U.S. Patent No. 6,415,264 to Walker et al. ("Walker").

2. The Examiner rejected claim 4 under 35 U.S.C. § 103(a) over Fisher, Walker, and U.S. Patent No. 6,044,363 to Mori et al. ("Mori").

3. The Examiner rejected claim 5 under 35 U.S.C. § 103(a) over Fisher, Walker, and U.S. Patent No. 6,078,901 to Ching ("Ching").

4. The Examiner rejected claim 7 under 35 U.S.C. § 103(a) over Fisher, Walker, and U.S. Patent No. 6,799,165 to Boesjes ("Boesjes").

5. The Examiner rejected claim 10 under 35 U.S.C. § 103(a) over Fisher, Walker, and U.S. Patent No. 6,393,426 to Odom et al. ("Odom").

B. The Issues on Appeal

1. Is the rejection of claims 1, 3, 6, 8-9, 62, 65-66, and 68-71 under 35 U.S.C. § 103(a) over the combination of Fisher and Walker proper?

2. Is the rejection of claim 4 under 35 U.S.C. § 103(a) over the combination of Fisher, Walker, and Mori proper?

3. Is the rejection of claim 5 under 35 U.S.C. § 103(a) over the combination of Fisher, Walker, and Ching proper?

4. Is the rejection of claim 7 under 35 U.S.C. § 103(a) over the combination of Fisher, Walker, and Boesjes proper?

5. Is the rejection of claim 10 under 35 U.S.C. § 103(a) over the combination of Fisher, Walker, and Odom proper?

III. ARGUMENTS IN REPLY TO EXAMINER'S ANSWER

- A. The portions of Walker newly identified by the Examiner do not remedy the Examiner's failure to show how the combination of Fisher and Walker teaches or suggests all of the recited features of claims 1, 3, 6, 8-9, 62, 65-66, and 68-71

The Examiner has failed to show that Fisher and Walker together disclose or suggest (1) "sending to the user's computer system the generated transaction price data as a suggested bid price in an auction," or (2) "sending to the seller's computer system the generated transaction price data as a suggested price for an item offered for sale in a fixed price transaction."

The Examiner previously characterized Walker's discussion at 8:13-16 as corresponding to "sending to the user's computer system the generated transaction price data as a suggested bid price in an auction," as recited by independent claims 1 and 62. (Final Office Action, March 8, 2007, p. 4.) The Examiner now characterizes Walker's discussion at 8:5-7 and 10:2-6 as corresponding to this recited feature. (Examiner's Answer, December 13, 2007, p. 11.) However, these newly identified portions of Walker, directed to determining the "value" of an item to be posted for sale based on similar items that have been posted and adjusting for the condition of the item and any peripherals included with the item, do not disclose or suggest "sending to the user's computer system the generated transaction price data as a suggested bid price in an auction" any more than the previously identified portions of Walker disclose or suggest this recited feature. While the newly identified portions of Walker indicate that the "value" of an item may comprise an "expected selling price" or an "expected final bid amount in the case of an auction," Walker simply estimates at what price an item may sell; it does not suggest a bid price to a user, as recited.

In addition, the Examiner previously characterized Walker's discussion at 8:13-16 as corresponding to "sending to the seller's computer system the generated transaction price data as a suggested price for an item offered for sale in a fixed price transaction," as recited by independent claim 68. (Final Office Action, March 8, 2007, p. 7 ("All of the limitations in claim 68 are closely parallel to the limitations of claim 62, analyzed

above[,] and are rejected on the same basis.”.) The Examiner now characterizes Walker's discussion at 7:16-19 as corresponding to this recited feature. (Examiner's Answer, December 13, 2007, p. 11-12.) However, this newly identified portion of Walker – directed to estimating the value of an item to be posted for sale based on, for example, sales during the past year, the last fifteen similar items sold, or a trend analysis for sales of similar items – does not disclose or suggest “sending to the seller's computer system the generated transaction price data as a suggested price for an item offered for sale in a fixed price transaction” any more than the previously identified portions of Walker disclose or suggest this recited feature. Walker simply estimates the value of an item to be posted for sale in an auction; it does not suggest a price at which a seller should offer an item for sale in a fixed price transaction, as recited.

- B. The Examiner's interpretation of the term "user" in claim 62 as "seller" does not remedy the Examiner's failure to show how the combination of Fisher and Walker teaches or suggests all of the recited features of independent claim 62

The Examiner's Answer indicates for the first time that the Examiner has interpreted the term "user" in independent claim 62 as "seller." (Examiner's Answer, December 13, 2007, p. 12.) The Examiner believes that this is consistent with the broadest reasonable interpretation of the term "user." (*Id.*) Regardless of whether this is a reasonable interpretation, Walker does not disclose or suggest “sending to the [seller's] computer system the generated transaction price data as a suggested bid price in an auction,” any more than it discloses or suggests “sending to the user's computer system the generated transaction price data as a suggested bid price in an auction” as recited in claim 62.

IV. CONCLUSION

For at least these reasons, along with the reasons presented in Appellants' Appeal Brief, each of claims 1, 3-10, 62, 65-66, and 68-71 has been improperly rejected. Accordingly, Appellants seek reversal of the rejection of these claims.

The Commissioner is hereby authorized to charge any shortages or credit any overpayment associated with this filing to our Deposit Account No. 50-0665, under Order No. 249768011US1 from which the undersigned is authorized to draw.

Respectfully submitted,

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Date: 2/13/08



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